

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

May 26, 2011

Les Trobman, General Counsel  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin Texas 78711-3087

Re: SOAH Docket No. 582-11-0486; TCEQ Docket No. 2009-1872-DIS; In  
Re: Application of Roman Forest Consolidated Municipal Utility District  
for a Standby Fee for Unimproved Property Within the District

Dear Mr. Trobman:

The above-referenced matter will be considered by the Texas Commission on Environmental Quality on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas.

Enclosed are copies of the Proposal for Decision and Order that have been recommended to the Commission for approval. Any party may file exceptions or briefs by filing the documents with the Chief Clerk of the Texas Commission on Environmental Quality no later than **June 21, 2011**. Any replies to exceptions or briefs must be filed in the same manner no later than **July 1, 2011**.

This matter has been designated **TCEQ Docket No. 2009-1872-DIS; SOAH Docket No. 582-11-0486**. All documents to be filed must clearly reference these assigned docket numbers. All exceptions, briefs and replies along with certification of service to the above parties shall be filed with the Chief Clerk of the TCEQ electronically at <http://www10.tceq.state.tx.us/epic/efilings/> or by filing an original and seven copies with the Chief Clerk of the TCEQ. Failure to provide copies may be grounds for withholding consideration of the pleadings.

Sincerely,

A handwritten signature in black ink that reads "Thomas H. Walston".

Thomas H. Walston  
Administrative Law Judge

THW:nl  
Enclosures  
xc: Service List

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

**AUSTIN OFFICE**

**300 West 15th Street Suite 502**

**Austin, Texas 78701**

**Phone: (512) 475-4993**

**Fax: (512) 322-2061**

**SERVICE LIST**

**AGENCY:** Environmental Quality, Texas Commission on (TCEQ)  
**STYLE/CASE:** ROMAN FOREST CONSOLIDATED MUNICIPAL UTILITY DISTRICT  
**SOAH DOCKET NUMBER:** 582-11-0486  
**REFERRING AGENCY CASE:** 2009-1872-DIS

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**STATE OFFICE OF ADMINISTRATIVE  
HEARINGS**

**ADMINISTRATIVE LAW JUDGE**

**ALJ THOMAS H. WALSTON**

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**REPRESENTATIVE / ADDRESS**

**PARTIES**

SCOTT HUMPHREY  
ATTORNEY  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
OFFICE OF PUBLIC INTEREST COUNSEL  
P. O. BOX 13087, MC-103  
AUSTIN, TX 78711-3087  
(512) 239-0574 (PH)  
(512) 239-6377 (FAX)  
shumphre@tceq.state.tx.us

OFFICE OF PUBLIC INTEREST COUNSEL

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ALAN P PETROV  
ATTORNEY AT LAW  
JOHNSON, RADCLIFFE, PETROVE & BOBITT, PLLC  
1001 MCKINNEY, SUITE 1000  
HOUSTON, TX 77002  
(713) 237-1221 (PH)  
(713) 237-1313 (FAX)

ROMAN FOREST CONSOLIDATED MUD

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MOHAMMED ASHARF  
14214 ASHMORE REEF COURT  
SUGAR LAND, TX 77478  
(281) 240-3717 (PH)  
(713) 732-7933 (CELL)  
memonmz@msn.com

MOHAMMED ASHARF

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DINNIAH TADEMA  
ATTORNEY  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
LITIGATION DIVISION  
MC-173 P.O. BOX 13087  
AUSTIN, TX 78711-3087  
(512) 239-3400 (PH)  
(512) 239-3434 (FAX)

EXECUTIVE DIRECTOR

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**SOAH DOCKET NO. 582-11-0486  
TCEQ DOCKET NO. 2009-1872-DIS**

<b>APPLICATION OF ROMAN FOREST</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
<b>CONSOLIDATED MUNICIPAL</b>	<b>§</b>	
<b>UTILITY DISTRICT FOR A</b>	<b>§</b>	<b>OF</b>
<b>STANDBY FEE FOR UNIMPROVED</b>	<b>§</b>	
<b>PROPERTY WITHIN THE DISTRICT</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

**I. INTRODUCTION**

Roman Forest Consolidated Municipal Utility District (District) has applied to the Texas Commission on Environmental Quality (TCEQ or Commission) for authority to adopt and levy for the years 2010, 2011, and 2012 an annual uniform operation and maintenance standby fee of \$216 per equivalent single family connection (ESFC) on unimproved property within the District in Montgomery County.<sup>1</sup> The Executive Director (ED) of the TCEQ proposed a lower annual standby fee of \$190 per equivalent single family connection.

At the contested case hearing, the District, the ED, and the Office of Public Interest Counsel (OPIC) all stipulated that the \$190 standby fee proposed by the ED was appropriate and should be made retroactive to 2010. The testimony and documentary evidence filed by the District and the ED was admitted into evidence in support of the stipulation. The single protesting party did not attend the evidentiary hearing, did not pre-file testimony or a statement of position, and did not file objections to either the District's or the ED's pre-filed testimony.<sup>2</sup>

The Administrative Law Judge (ALJ) recommends that the Commission approve an annual operation and maintenance standby fee of \$190 per ESFC on unimproved property within the District for the years 2010, 2011, and 2012.

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<sup>1</sup> Standby fees are authorized pursuant to TEX. WATER CODE § 49.231 and 30 TEX. ADMIN. CODE § 293.141.

<sup>2</sup> The Protestant requested to appear at the evidentiary hearing by telephone, but the request was denied. Order No. 3 (May 18, 2011).

## II. PROCEDURAL HISTORY

The procedural history of this case is set forth below:

August 26, 2009	District's application received by TCEQ.
September 22, 2009	TCEQ issued a Notice of District Application.
February 26, 2010	The TCEQ Districts Review Team recommended a \$190 annual operation and maintenance standby fee.
September 22, 2010	The Commission issued an interim order, referring the case to the State Office of Administrative Hearings (SOAH) for a contested case hearing.
October 1, 2010	The Commission's Chief Clerk issued a Notice of Hearing for a preliminary hearing on October 27, 2010.
October 27, 2010	Preliminary Hearing held and procedural schedule established, leading to a hearing on the merits on May 19, 2011.
May 19, 2011	Hearing on the merits held and the record closed. Attorney Alan Petrov represented the District; staff attorney Dinniah Tadema represented the ED; and attorney Scott Humphrey represented OPIC. The intervenor / protestant Mohammed Ashraf did not attend or participate.

## III. DISCUSSION

The District is a political subdivision of the state that provides retail water and sewer services pursuant to Chapters 49 and 54 of the Texas Water Code. When the District filed its application in 2009, it was collecting a \$216 annual standby fee as previously authorized by the Commission. In this proceeding, the District requested authority to continue collecting a \$216 operation and maintenance standby fee. The District collects a debt-service tax and does not seek a debt-service standby fee. It has never collected a maintenance tax or other taxes attributable to water and wastewater service.

The District includes a total of 1,031 developable lots or ESFCs. In August 2009, it had 532 active ESFCs and 499 undeveloped lots. The District's residential service rates for 10,000

gallons of water and wastewater service equaled \$56.00, and the average ESFC water usage per month totaled 8,300 gallons.<sup>3</sup>

Standby fees are designed to allow a district to distribute a fair portion of the cost burden for financing, operating, and maintaining water and sewer facilities and services to property owners who have not yet constructed improvements but who have water, wastewater, and/or drainage capacity available. TEX. WATER CODE § 49.231(b). The purpose of a standby fee is to recover funds necessary for operation, maintenance, and financing of capital costs of facilities. A district may impose standby fees on undeveloped property that does not utilize the capacity allocated to the property shown in the district's land development plan. 30 TAC § 293.141(a)-(c). The Water Code requires the Commission to find a standby fee to be necessary to maintain the financial integrity and stability of the district, and to find that the fee fairly allocates the costs of district facilities and services among property owners of the district. TEX. WATER CODE § 49.231(f). The Commission's rules provide guidelines for determining whether a proposed standby fee meets these statutory criteria. 30 TAC §§ 293.141-293.150.

Although the statute and rules allow standby fees for both debt service and operation and maintenance, the District has requested only an operation and maintenance standby fee. To qualify for an operation and maintenance standby fee, a district's capitalized reserves for operating purposes must either be depleted (except for an amount not to exceed a three-month reserve) or be projected to be depleted within the three years during which the standby fee would be levied. In addition, the operation fund must either be operating at a deficit, or be projected to operate at a deficit with the three years during which the standby fee would be levied, assuming residential water and wastewater usage rates exceed \$40 for the first 10,000 gallons of water and wastewater usage, or exceed \$27 if the district provides only water and wastewater service.<sup>4</sup> 30 TAC § 293.143(b) and (d).

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<sup>3</sup> District's Ex. 5, Standby Fee Calculations at 1.

<sup>4</sup> ED Ex. 1, Soto direct at 6.

The testimony and exhibits of both the District and the ED established that the District qualifies for a \$190 annual operation and maintenance standby fee. The District's evidence showed that: (a) the District's general fund balance is less than 25% of annual budgeted expenditures; (b) the general fund balance is expected to operate at a deficit without the standby fees, assuming the monthly utility rates for the first 10,000 gallons are at least \$40; (c) the proposed standby fee revenues, when combined with any maintenance tax and utility system revenues, is not more than necessary to balance the budget; (d) the proposed standby fee per lot does not exceed the rates charged to active customers for 10,000 gallons actual water and wastewater usage; and (e) the standby fee per lot does not exceed a pro-rata share of the fixed operating costs for existing system facilities when distributed among the active, inactive, and undeveloped property owners.<sup>5</sup>

The ED calculated a \$190 annual standby fee for the years 2010, 2011, and 2012 for all undeveloped lots to which the District provides or proposes to provide water, wastewater, or drainage services. The ED determined the following calculation inputs as of May 31, 2009 (the end of the District's fiscal year):

Projected average annual deficit	\$117,687
Projected annual expenses	\$552,575
Three-month general fund reserve	\$138,144
Fund balance	\$235,124

As shown, the ED's evidence established that the District's fund balance actually exceeded the three-month general reserve calculation by \$96,980 (\$235,124 – \$138,144). The ED spread this amount over the three-year period at \$32,327 per year, which in turn reduced the projected annual deficit from \$117,737 to \$85,360 (\$117,687 - \$32,327). To recover this reduced projected annual deficit, the ED then calculated an annual standby fee of \$190, assuming 499 undeveloped lots and a 90% collection rate ( $499 \times \$190 \times 0.9 = \$85,329$ ).

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<sup>5</sup> District Ex. 1, Blitch direct at 2-4; District Ex. 5, Standby Fee Calculations at 1-4. ED Ex. 1, Soto direct at 6-7.

Although the District requested a \$216 annual standby fee, it stipulated at the hearing that the ED's calculation and proposed \$190 standby fee is acceptable. OPIC also stipulated that a \$190 standby fee is appropriate, and the District, the ED, and OPIC all stipulated that the standby fee should be made retroactive to 2010.

#### IV. RECOMMENDATION

Based on the parties' stipulations and the evidence presented, the ALJ finds that a \$190 annual operation and maintenance standby fee for the District is fair and reasonable, and the ALJ recommends that the Commission approve this standby fee for the District for the years 2010, 2011, and 2012.

Signed May 26, 2011.

A handwritten signature in black ink, appearing to read "Thomas H. Walston", is written over a horizontal line.

THOMAS H. WALSTON  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS



# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER Approving the Application of  
Roman Forest Consolidated Municipal Utility District for a  
Standby Fee for Unimproved Property Within the District  
TCEQ Docket No. 2009-1872-DIS  
SOAH Docket No. 582-11-0486**

On \_\_\_\_\_, 2011, the Texas Commission on Environmental Quality (Commission) considered the application of the Roman Forest Consolidated Municipal Utility District for an operation and maintenance standby fee for unimproved property within the District in Montgomery County. Administrative Law Judge (ALJ) Thomas H. Walston of the State Office of Administrative Hearings (SOAH) presented a Proposal for Decision (PFD) recommending that the Commission approve for the District an annual operation and maintenance standby fee of \$190 per unimproved lot for the years 2010, 2011, and 2012. After considering the PFD, the Commission adopts the following Findings of Fact and Conclusions of Law:

## **FINDINGS OF FACT**

1. Roman Forest Consolidated Municipal Utility District (District) is a political subdivision of the state located in Montgomery County that provides retail water and sewer services pursuant to Chapters 49 and 54 of the Texas Water Code.
2. The District includes a total of 1,031 developable lots or equivalent single family connections (ESFCs). In August 2009, it had 532 active ESFCs and 499 undeveloped lots. The District's residential service rates for 10,000 gallons of water and wastewater service equaled \$56.00, and the average ESFC water usage per month totaled 8,300 gallons.

3. On August 26, 2009, the District submitted to the Commission an application for an annual operation and maintenance standby fee of \$216. The application was based on its fiscal year ending May 31, 2009, and the standby fee was proposed for the years 2010, 2011, and 2012.
4. On September 22, 2009, the Commission's Clerk issued a Notice of District Application.
5. On October 12, 2009, the District mailed the Notice of District Application by certified mail, return receipt requested, to each owner of property within the District.
6. On October 9, 2009, and October 16, 2009, the District published notice of its application in the *Conroe Courier*, a newspaper of general circulation in Montgomery County.
7. On February 22, 2010, the Commission's Districts Review Team recommended a \$190 annual operation and maintenance standby fee for the District for the years 2010, 2011, and 2012.
8. On September 22, 2010, the Commission referred this case to SOAH for a contested case hearing.
9. On October 27, 2010, a preliminary hearing convened, jurisdiction was established, and the following parties were designated: the District; the Executive Director of the Commission; the Office of Public Interest Counsel (OPIC); and Mohammed Ashraf.
10. On February 24, 2011, the District filed testimony and documentary evidence in support of a \$216 annual operations and maintenance standby fee.
11. The District collects a debt-service tax and does not seek a debt-service standby fee. It has never collected a maintenance tax or other taxes attributable to water and wastewater service.
12. On April 8, 2011, the Executive Director filed testimony and documentary evidence in support of a \$190 annual standby fee.
13. A hearing on the merits of the Application convened on May 19, 2011, at the SOAH hearing facilities in Austin, Texas. Attorney Alan Petrov represented the District; staff attorney Dinniah Tadema represented the Executive Director; and attorney Scott Humphrey represented OPIC. The intervenor/protestant Mohammed Ashraf did not attend or participate. The record closed at the conclusion of the hearing that day.

14. At the hearing on the merits, the District, the Executive Director, and the OPIC stipulated that a \$190 standby fee proposed by the Executive Director was appropriate and should be made retroactive to 2010. The testimony and documentary evidence filed by the District and the Executive Director was admitted into evidence in support of the stipulation. Mohammed Ashraf did not attend the hearing on the merits, did not pre-file testimony or a statement of position, and did not file objections to either the District's or the Executive Director's pre-filed testimony.
15. For the years 2010, 2011, and 2012, the District's general fund balance is expected to operate at a deficit without the proposed \$190 standby fee, assuming the monthly utility rates for the first 10,000 gallons are at least \$40.
16. The proposed \$190 standby fee revenues, when combined with any maintenance tax and utility system revenues, is not more than necessary to balance the budget.
17. The proposed \$190 standby fee per undeveloped lot does not exceed the rates charged to active customers for 10,000 gallons actual water and wastewater usage.
18. The proposed \$190 standby fee per lot does not exceed a pro-rata share of the fixed operating costs for existing system facilities when distributed among the active, inactive, and undeveloped property owners.
19. Without the proposed standby fee, the District's general fund balance is expected to operate at a deficit of \$85,360 per year for 2010, 2011, and 2012.
20. Assuming a 90% collection rate for 499 undeveloped lots, an annual operations and maintenance standby fee of \$190 will cover the projected deficit and balance the District's operations and maintenance budget.
21. An annual operations and maintenance standby fee of \$190 per undeveloped lot for the years 2010, 2011, and 2012 is reasonable and necessary to protect the financial integrity and stability of the District.
22. The District's proposed \$190 operations and maintenance standby fee would fairly allocate the District's costs among property owners, as most undeveloped lot owners would pay

considerably less total fees than owners of developed lots that receive water and wastewater services.

### **CONCLUSIONS OF LAW**

1. The District is a district as defined in TEX. WATER CODE ANN. § 49.001(a).
2. The Texas Commission on Environmental Quality has jurisdiction to consider an application for a standby fee filed by a district, pursuant to TEX. WATER CODE ANN. § 49.231.
3. The State Office of Administrative Hearings has jurisdiction to conduct a hearing and issue a proposal for decision pursuant to TEX. GOV'T CODE ANN. § 2003.047 and TEX. WATER CODE ANN. §§ 5.311 and 26.021.
4. The ALJ conducted a contested case hearing and issued a proposal for decision on the District's proposed operation and maintenance standby fee under TEX. GOV'T. CODE ANN. ch. 2003, TEX. WATER CODE ANN. ch. 49, and 30 TEX. ADMIN. CODE chs. 80 and 293.
5. Proper notice of the Application and of the hearing was given as required by TEX. WATER CODE ANN. § 49.231(e); 30 TEX. ADMIN. CODE Ch. 80 and § 293.145; and TEX. GOV'T. CODE ANN. §§ 2001.051 and 2001.052.
6. The Executive Director of the Commission prepared a written report concerning the standby fee application and the District's financial condition in accordance with TEX. WATER CODE ANN. § 49.231(d).
7. The District meets the criteria of 30 TEX. ADMIN. CODE § 293.143(b) regarding the District's eligibility to seek approval from the Commission to use standby fee revenue to supplement the District's operation and maintenance fund.
8. The operation and maintenance standby fee requested by the District and recommended by the Executive Director meets the requirements of TEX. WATER CODE ANN. § 49.231(f) in that it is necessary to maintain the financial integrity and stability of the District, and the standby fee fairly allocates the costs of the District's facilities and services among property owners within the District.
9. The proposed \$190 annual operation and maintenance standby fee should be made retroactive to 2010 due to the time incurred to process the application.

**NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY THAT:**

1. Roman Forest Consolidated Municipal Utility District is authorized to levy and collect annual operation and maintenance standby fees in the amount of \$190 per equivalent single family connection on unimproved property within the District in accordance with TEX. WATER CODE ANN. § 49.231 for the years 2010, 2011, and 2012.
2. The District shall notify customers of the adoption of a standby fee pursuant to this Order in the manner required by the Commission's rules.
3. The District shall, within 30 days from the date of this Order, file a copy of this Order in the Office of the County Clerk of each county in which a portion of the District lies.
4. Within 7 days from the date of the District's order adopting standby fees authorized by this Order, the District shall submit to the Executive Director and file with the Office of the County Clerk of each county in which a portion of the District lies, an update of the information required by TEX. WATER CODE ANN. § 49.455.
5. The effective date of this Order is the date the Order is final, as provided by TEX. GOV'T CODE ANN. § 2001.144 and 30 TEX. ADMIN. CODE § 80.273.
6. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief not expressly granted herein, are hereby denied for want of merit.
7. The Chief Clerk of the Texas Commission on Environmental Quality shall forward a copy of this Order and tariff to the parties.

8. If any provision, sentence, clause, or phase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.

Issue Date:

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

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Bryan W. Shaw, Ph.D., Chairman